

EXHIBIT 65

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

-----:
UNITED STATES, et al., :
:
Plaintiff, :
:
vs. : Case No.:
: 1:23-CV-00108-LMB-JFA
GOOGLE, LLC, :
:
Defendant. :
-----:

VIDEOTAPED DEPOSITION OF ALLEN OWENS, JR.

DATE: September 28, 2023
TIME: 9:36 a.m.
LOCATION: Paul, Weiss, Rifkind,
Wharton & Garrison LLP
2001 K Street, Northwest
Washington, D.C. 20006-1047

REPORTED BY: Shari R. Broussard, RPR, CSR
Reporter, Notary

Job No. CS6118347

<p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S</p> <p>2 On behalf of Plaintiff:</p> <p>3 CHASE PRITCHETT, ESQUIRE</p> <p>4 KATHERINE CLEMONS, ESQUIRE</p> <p>5 ALVIN CHU, ESQUIRE</p> <p>6 U.S. Department of Justice</p> <p>7 450 5th Street, Northwest</p> <p>8 Washington, D.C. 20530</p> <p>9 On behalf of Defendant:</p> <p>10 MARTHA L. GOODMAN, ESQUIRE</p> <p>11 LEAH HIBBLER, ESQUIRE</p> <p>12 Paul, Weiss, Rifkind,</p> <p>13 Wharton & Garrison, LLP</p> <p>14 2001 K Street, Northwest</p> <p>15 Washington, D.C. 20006-1047</p> <p>16 (202) 223- 7341</p> <p>17 mgoodman@paulweiss.com</p> <p>18 ALSO PRESENT:</p> <p>19 Orson Braithwaite, Video Technician</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 4</p> <p>1 DEFENDANT'S DEPOSITION EXHIBITS: * PAGE</p> <p>2 164 Plaintiff's Responses to Defendant</p> <p>3 Google LLC's Fifth Set of</p> <p>4 Interrogatories to the United States 101</p> <p>5 PREVIOUSLY MARKED/REFERRED TO:</p> <p>6 55 Bates NAVY-ADS-241136 to 143</p> <p>7 60 Bates NAVY-ADS-28530 to 531</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22 (* Exhibits attached to transcript.)</p>
<p style="text-align: right;">Page 3</p> <p>1 C O N T E N T S</p> <p>2 EXAMINATION BY: PAGE</p> <p>3 Counsel for Defendant 6</p> <p>4 Counsel for Plaintiff 105</p> <p>5</p> <p>6 DEFENDANT'S DEPOSITION EXHIBITS: * PAGE</p> <p>7 154 Navy Communications with Attorneys 17</p> <p>8 155 e-mails Re: Award of M&A contract, Bates</p> <p>9 NAVY-ADS-219026 to 173 27</p> <p>10 156 Amendment of Solicitation/Modification of</p> <p>11 Contract, No. 2, Bates NAVY-ADS-12880</p> <p>12 to 925 32</p> <p>13 157 e-mails Re: Navy Advertising Contract</p> <p>14 N00189-15-D-Z024, Bates NAVY-ADS-315296</p> <p>15 to 374 40</p> <p>16 158 e-mail from Uhlman to Owens, 7/15/22,</p> <p>17 Bates NAVY-ADS-72243 61</p> <p>18 159 Digital Media Bill, Oct-22, Bates</p> <p>19 NAVY-ADS-374151 to 171 67</p> <p>20 160 Digital Media Bill, Nov-22, Bates</p> <p>21 NAVY-ADS-373978 to 4145 77</p> <p>22 161 Digital Media FY19 Q3 Refund, Bates</p> <p> NAVY-ADS-5844 82</p> <p> 162 e-mails Re: Navy Refund Checks, Bates</p> <p> NAVY-ADS-5834 to 837 83</p> <p> 163 Plaintiff United States of America's</p> <p> Responses to Defendant Google LLC's</p> <p> Second Set of Interrogatories to the</p> <p> United States 99</p>	<p style="text-align: right;">Page 5</p> <p>1 P R O C E E D I N G S</p> <p>2</p> <p>3 VIDEO TECHNICIAN: Good morning. We are</p> <p>4 going on the record at 9:36 a.m. on</p> <p>5 September 28th, 2023.</p> <p>6 Please note that the microphones are</p> <p>7 sensitive and may pick up whispering, private</p> <p>8 conversations. Please mute your phones at this</p> <p>9 time.</p> <p>10 Audio and video recording will continue</p> <p>11 to take place unless all parties agree to go off</p> <p>12 the record.</p> <p>13 This is Media Unit 1 of the</p> <p>14 video-recorded deposition of Mr. Allen Owens in</p> <p>15 the matter of United States, et al., versus</p> <p>16 Google, LLC, filed in the United States District</p> <p>17 Court, Eastern District of Virginia, Alexandria</p> <p>18 Division, Case Number 1:23-cv-00108-LMB-JFA.</p> <p>19 My name is Orson Braithwaite</p> <p>20 representing Veritext Legal Solutions and I'm the</p> <p>21 videographer. The court reporter is Shari</p> <p>22 Broussard from the firm Veritext Legal Solutions.</p>

<p style="text-align: right;">Page 38</p> <p>1 Q -- correct?</p> <p>2 MR. PRITCHETT: Objection. Form.</p> <p>3 VIDEO TECHNICIAN: Counsel, can you</p> <p>4 repeat that.</p> <p>5 MR. PRITCHETT: Objection. Form.</p> <p>6 THE WITNESS: The COR -- as stated</p> <p>7 earlier, the COR is unable to change the task</p> <p>8 orders or the contract. Only the contracting</p> <p>9 officer can do that.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q Right. I'm asking about the COR's</p> <p>12 authority to direct VMLY&R's performance. Is the</p> <p>13 COR permitted to direct VMLY&R's performance in</p> <p>14 any specific manner?</p> <p>15 MR. PRITCHETT: Objection. Form.</p> <p>16 THE WITNESS: The COR is not able to</p> <p>17 tell the contractor exactly how to do the job.</p> <p>18 BY MS. GOODMAN:</p> <p>19 Q If you go back to Exhibit 155, turning</p> <p>20 to page one 1- -- 219053. Under just above the</p> <p>21 little b where it says "Contract Surveillance,"</p> <p>22 I'm looking at number (2).</p>	<p style="text-align: right;">Page 40</p> <p>1 contractor's performance to see that inefficient</p> <p>2 or wasteful methods are not being used"?</p> <p>3 A That is a correct reading as well.</p> <p>4 Q You can set that aside.</p> <p>5 (Defendant's Exhibit Number 157 was</p> <p>6 marked for identification.)</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q And I'm handing you now Exhibit 157,</p> <p>9 NAVY-ADS-315296. And I want to -- I want you to</p> <p>10 confirm that this is the 2015 contract between</p> <p>11 VMLY&R and the Navy, correct?</p> <p>12 MR. PRITCHETT: Objection. Form.</p> <p>13 THE WITNESS: One moment to quickly</p> <p>14 review.</p> <p>15 So unlike the previous document, it</p> <p>16 looks like this one only has the -- the first file</p> <p>17 and then it has a listing of the attachments,</p> <p>18 whereas this one is more complete because it had</p> <p>19 also the printed attachments from the contract.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q Okay. So is what is -- what I've marked</p> <p>22 as Exhibit 157 the 2015 contract between VMLY&R</p>
<p style="text-align: right;">Page 39</p> <p>1 Do you see where I am?</p> <p>2 A The second paragraph from the top?</p> <p>3 Q Yes.</p> <p>4 A Yes.</p> <p>5 Q Okay. And am I reading correctly the</p> <p>6 sentence which says, "The COR shall not instruct</p> <p>7 the contractor how to perform"?</p> <p>8 A Yes, you are reading that correctly.</p> <p>9 Q Okay. And then if you look under b.(1)</p> <p>10 under "Contract Surveillance," am I reading</p> <p>11 correctly the sentences which say, "The COR must</p> <p>12 be able to distinguish between surveillance (which</p> <p>13 is proper and necessary) and supervision (which is</p> <p>14 not permitted). Surveillance becomes supervision</p> <p>15 when you go beyond enforcing the terms of the</p> <p>16 contract. If the contractor is directed to</p> <p>17 perform the contract services in a specific</p> <p>18 manner, the line is being crossed"?</p> <p>19 A That is an accurate reading.</p> <p>20 Q Okay. And in number (2) under b.(2) --</p> <p>21 under b., did I read it -- am I reading it</p> <p>22 correctly when I say, "The COR shall monitor the</p>	<p style="text-align: right;">Page 41</p> <p>1 and the Navy?</p> <p>2 MR. PRITCHETT: Objection. Form.</p> <p>3 THE WITNESS: With the exception of the</p> <p>4 attachments, which are notated on page 77 and 78</p> <p>5 but not printed out.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q Okay.</p> <p>8 A Unless I'm missing it. I don't think</p> <p>9 so.</p> <p>10 Q Is it a common practice that the Navy</p> <p>11 sometimes include the attachments in the contracts</p> <p>12 and sometimes not?</p> <p>13 MR. PRITCHETT: Objection. Form.</p> <p>14 THE WITNESS: No, I -- I would say it's</p> <p>15 probably more that the -- that the second file</p> <p>16 maybe just wasn't attached, I don't -- I -- I</p> <p>17 don't know, but -- but there should be a listing</p> <p>18 of those.</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q And so they're not combined into a</p> <p>21 single file often, is that the case, as we saw in</p> <p>22 Exhibit 155, where there are two attachments to</p>

<p style="text-align: right;">Page 42</p> <p>1 the cover e-mail?</p> <p>2 MR. PRITCHETT: Objection. Form.</p> <p>3 THE WITNESS: Yeah, I -- I can't speak</p> <p>4 to why Ms. LaCroce on the November 1st of 2018 may</p> <p>5 not have attached the second file.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q Okay. But at least for purposes of your</p> <p>8 review here today, you can confirm that what is in</p> <p>9 front of you as Exhibit 157 is the contract -- the</p> <p>10 2015 contract without the attachments, correct?</p> <p>11 A That is correct.</p> <p>12 Q Okay. You can set that to the side.</p> <p>13 And so then task orders are issued</p> <p>14 pursuant to the contracts that we just looked at,</p> <p>15 correct?</p> <p>16 A Correct, task orders are issued</p> <p>17 afterwards.</p> <p>18 Q Okay. What is the cadence or frequency</p> <p>19 with which task orders are issued under these</p> <p>20 contracts?</p> <p>21 MR. PRITCHETT: Objection. Form.</p> <p>22 THE WITNESS: Yeah. So -- so task</p>	<p style="text-align: right;">Page 44</p> <p>1 issued at once, and so each year is different. It</p> <p>2 can come quarterly, in some cases it could come</p> <p>3 once every other month, and then in some cases you</p> <p>4 could get a four- or five-month shot at a time.</p> <p>5 It really just depends on the availability of</p> <p>6 funds at higher echelons of command and how they</p> <p>7 see fit to issue their funds down.</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q Okay. I'm handing you what I've marked</p> <p>10 as Exhibit 55. This is a document that we looked</p> <p>11 at in your prior deposition, NAVY-ADS-241136, and</p> <p>12 this is an example of a task order issued pursuant</p> <p>13 to the 2021 contract, correct?</p> <p>14 A Yes, that would be correct.</p> <p>15 Q Okay. And if you look at page 241142</p> <p>16 under "3. Scope" -- do you see where I am?</p> <p>17 A You said 2211?</p> <p>18 Q 241142.</p> <p>19 A Yes.</p> <p>20 Q We're reading in the Performance Work</p> <p>21 Statement.</p> <p>22 What's the Performance Work Statement</p>
<p style="text-align: right;">Page 43</p> <p>1 orders are issued as funds are made available.</p> <p>2 BY MS. GOODMAN:</p> <p>3 Q And how are funds made available?</p> <p>4 A From Congress to the Navy, from the Navy</p> <p>5 to the various echelons of command. Then once the</p> <p>6 comptroller at Navy Recruiting Command gets the --</p> <p>7 the marketing and advertising funding, then he</p> <p>8 issues it to us -- to Navy Recruiting Command, who</p> <p>9 will then go through the process of getting it</p> <p>10 approved onto the task order and getting the task</p> <p>11 order issued.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q And what is -- with what frequency are</p> <p>14 funds made available in -- in order for you to</p> <p>15 issue task orders?</p> <p>16 A Sure.</p> <p>17 MR. PRITCHETT: Objection. Form.</p> <p>18 THE WITNESS: In a perfect scenario the</p> <p>19 funds would be issued at the beginning of the</p> <p>20 fiscal year, but in situations such as continuing</p> <p>21 resolutions and whatnot, they can be delayed. And</p> <p>22 even after they are issued, they are not always</p>	<p style="text-align: right;">Page 45</p> <p>1 represent?</p> <p>2 A The Performance Work Statement</p> <p>3 represents the Government's intent -- a statement</p> <p>4 of the services they're required.</p> <p>5 Q And it reflects what the contractor, in</p> <p>6 this case VMLY&R, shall do under this task order,</p> <p>7 correct?</p> <p>8 A It does. It -- it lays out the -- the</p> <p>9 objective, the scope, the resources available and</p> <p>10 the timing.</p> <p>11 Q Okay. And under "3. Scope" the second</p> <p>12 bullet, can you read the first sentence -- the</p> <p>13 first -- the first -- the first sentence of the</p> <p>14 second bullet?</p> <p>15 A Sure. Under "Scope"?</p> <p>16 Q Yeah.</p> <p>17 A "Young & Rubicam (VMLY&R) shall</p> <p>18 research, negotiate, and purchase digital media</p> <p>19 and Internet advertising for flighting from</p> <p>20 Jan/Feb of 2022 through 30 June of 2022 in the</p> <p>21 form of:"</p> <p>22 Q Okay. And that -- that describes a</p>

<p style="text-align: right;">Page 46</p> <p>1 service that VMLY&R shall do under this task 2 order, correct? 3 MR. PRITCHETT: Objection. Form. 4 THE WITNESS: Correct. This lays out 5 the -- the purchasing that is being requested. 6 BY MS. GOODMAN: 7 Q Okay. And this task order does not set 8 a price for the advertising that Young & Rubicam 9 shall research, negotiate, and purchase, correct? 10 MR. PRITCHETT: Objection. Form, 11 foundation. 12 THE WITNESS: That is correct. 13 BY MS. GOODMAN: 14 Q It simply sets a ceiling that they 15 cannot exceed; is that correct? 16 MR. PRITCHETT: Objection. Form, 17 foundation. 18 THE WITNESS: It does set the ceiling 19 they cannot exceed and it does list the 20 approximate number of impressions expected to get 21 for that. 22 BY MS. GOODMAN:</p>	<p style="text-align: right;">Page 48</p> <p>1 estimates in scope, number three here, correct? 2 MR. PRITCHETT: Objection. Form. 3 THE WITNESS: Yes. 4 BY MS. GOODMAN: 5 Q And the Navy does not tell VMLY&R how to 6 purchase ads, correct? 7 MR. PRITCHETT: Objection. Form, 8 foundation. 9 THE WITNESS: The Navy does not tell the 10 contractor how to perform the job. As stated 11 earlier, that -- that would be improper. 12 BY MS. GOODMAN: 13 Q And, therefore, you do not tell the 14 contractor how to purchase the advertising 15 requested that they go purchase in scope three? 16 MR. PRITCHETT: Objection. Form, 17 foundation. 18 THE WITNESS: In scope three we lay out 19 the items that we are looking to purchase and then 20 based on a follow-on recommended plan is where we 21 lay out the specifics of what we're looking to 22 purchase. However, as you stated, we then do not</p>
<p style="text-align: right;">Page 47</p> <p>1 Q And that's an estimate, correct? 2 A Due to the nature of the -- the -- the 3 market price changes, then yes, that's an -- that 4 is an estimate. 5 Q Okay. And the task order does not set a 6 quantity of advertising to buy, correct? 7 MR. PRITCHETT: Objection. Form. 8 THE WITNESS: It does provide estimated 9 quantities of what's expected. 10 BY MS. GOODMAN: 11 Q Of the impressions; is that what you're 12 referencing? 13 A For -- for the top two major bullets of 14 digital display and online video as well as for 15 paid search, yes -- or, excuse me, paid social, 16 yes. And then for the remaining items it lists 17 out the approximate number of leads expected to be 18 garnered for the investment. 19 Q Okay. And those are -- 20 A Again, those are estimates. 21 Q That's my next question. 22 So you're looking at all of the</p>	<p style="text-align: right;">Page 49</p> <p>1 tell them how to go and purchase them. 2 BY MS. GOODMAN: 3 Q Okay. Does the Navy tell the contractor 4 what vendors to purchase advertising from? 5 MR. PRITCHETT: Objection. Form, 6 foundation. 7 THE WITNESS: In the form of an approved 8 reco deck or an approved recommended plan, the 9 Navy does. The Navy asks for a recommended plan 10 and relies on the experience and expertise of the 11 ad agency to provide a recommended plan, but they 12 do not purchase it until the Navy has approved the 13 plan. 14 BY MS. GOODMAN: 15 Q And under the contract and task orders 16 for the contracts that we've been talking here -- 17 about here today between the Navy and VMLY&R, 18 VMLY&R uses a subcontractor to purchase ads, 19 correct? 20 MR. PRITCHETT: Objection. Form, 21 foundation. 22 THE WITNESS: Based on my discussions</p>

<p style="text-align: right;">Page 50</p> <p>1 with the FLC contracting officer, the term</p> <p>2 "affiliate" was used to describe WaveMaker, the</p> <p>3 one who purchases the ads for Navy.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q I see. So rather than describing</p> <p>6 WaveMaker as a subcontractor, is it the Navy's</p> <p>7 position that the more appropriate way to describe</p> <p>8 them is affiliate?</p> <p>9 MR. PRITCHETT: Objection. Form.</p> <p>10 THE WITNESS: Again, based on my</p> <p>11 conversations with FLC, yes.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q And what is FLC?</p> <p>14 A The Fleet Logistics Center, the one who</p> <p>15 does contracts for the Navy.</p> <p>16 Q Okay. And there's no contract between</p> <p>17 Navy and WaveMaker, correct?</p> <p>18 MR. PRITCHETT: Objection. Form,</p> <p>19 foundation.</p> <p>20 THE WITNESS: The -- the marketing and</p> <p>21 -- the only marketing and advertising contract</p> <p>22 Navy has is with VMLY&R.</p>	<p style="text-align: right;">Page 52</p> <p>1 Q Do you know -- does the Navy know how</p> <p>2 WaveMaker makes purchases of ads for the Navy</p> <p>3 under the contracts we've been discussing?</p> <p>4 MR. PRITCHETT: Objection. Form.</p> <p>5 THE WITNESS: So the Navy tells them</p> <p>6 which ads or which -- approves a plan which lays</p> <p>7 out which vendors to buy from, but we do not tell</p> <p>8 them what methods to employ to purchase those, we</p> <p>9 rely on their expertise.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q And so does the Navy know how WaveMaker</p> <p>12 goes about actually purchasing the media for the</p> <p>13 Navy under the contracts we've been discussing?</p> <p>14 MR. PRITCHETT: Objection. Form.</p> <p>15 THE WITNESS: To an extent as what --</p> <p>16 what would be provided in the reco deck, but as</p> <p>17 far as the detailed execution of how those ads are</p> <p>18 placed, again, the Navy relies on the expertise of</p> <p>19 VMLY&R to do that.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q Okay. So the best understand- -- the</p> <p>22 best representation of the Navy's understanding of</p>
<p style="text-align: right;">Page 51</p> <p>1 BY MS. GOODMAN:</p> <p>2 Q And thus there's not one between the</p> <p>3 Navy and WaveMaker, correct?</p> <p>4 MR. PRITCHETT: Same objections.</p> <p>5 THE WITNESS: The contract is between</p> <p>6 VMLY&R and Navy and it's my understanding that</p> <p>7 WaveMaker is an affiliate of VMLY&R and -- and</p> <p>8 does that purchasing on their -- on -- on behalf</p> <p>9 of them.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q On behalf of VMLY&R?</p> <p>12 A Right.</p> <p>13 MR. PRITCHETT: Objection. Form.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q And there's no contract between Google</p> <p>16 and the Navy for purposes of marketing and</p> <p>17 advertising, correct?</p> <p>18 MR. PRITCHETT: Objection. Form,</p> <p>19 foundation.</p> <p>20 THE WITNESS: Correct, our contract is</p> <p>21 with VMLY&R.</p> <p>22 BY MS. GOODMAN:</p>	<p style="text-align: right;">Page 53</p> <p>1 how ads are actually purchased is found in the</p> <p>2 tactical recommendation decks; am I understanding</p> <p>3 your testimony correctly?</p> <p>4 MR. PRITCHETT: Objection. Form.</p> <p>5 THE WITNESS: My testimony is that the</p> <p>6 Navy's understanding of which vendors to utilize</p> <p>7 would be laid out in that approved deck, but</p> <p>8 the -- the method employed to go out and procure</p> <p>9 the ad would -- would be something that VMLY&R</p> <p>10 would -- would do themselves. We wouldn't tell</p> <p>11 them how to do it.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q And is something that is not known to</p> <p>14 the Navy, correct?</p> <p>15 MR. PRITCHETT: Objection. Form.</p> <p>16 THE WITNESS: To an extent. There would</p> <p>17 be an exception such as our programmatic buying</p> <p>18 with The Trade Desk.</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q What is -- what do you mean by that?</p> <p>21 A So you're -- you're asking which methods</p> <p>22 are used to employ -- or which methods are</p>

<p style="text-align: right;">Page 66</p> <p>1 Q And you said you reviewed invoices to</p> <p>2 prepare for your deposition, correct?</p> <p>3 A That is correct.</p> <p>4 Q Okay. And please describe for me the</p> <p>5 process by which the Navy has issued invoices?</p> <p>6 MR. PRITCHETT: Objection. Form.</p> <p>7 THE WITNESS: So VMLY&R is issued the</p> <p>8 task order to purchase media. When a media buy is</p> <p>9 to occur, the agency does an invoicing -- what we</p> <p>10 call the upfront invoicing or an initial</p> <p>11 invoicing, which -- which specifies a specific</p> <p>12 amount. We'll call it X. They invest -- they</p> <p>13 invoice us for that spend. And then once the buy</p> <p>14 has been completed and all of the dollars have</p> <p>15 been executed, they subsequently send us another</p> <p>16 invoice which will -- if the dollars were exact,</p> <p>17 they don't send us another invoice. If the -- if</p> <p>18 there is any credit due because let's say that the</p> <p>19 amount of spend, since it was not to exceed, the</p> <p>20 amount of spend comes under, they will send us a</p> <p>21 separate invoice that has a credit issued on there</p> <p>22 and the invoice is uploaded -- in both of those</p>	<p style="text-align: right;">Page 68</p> <p>1 before, just using a different term, pre-bill,</p> <p>2 instead of upfront, but it is the amount that's</p> <p>3 billed. Since the exact amount is market</p> <p>4 dependent on pricing, it won't be known until</p> <p>5 afterwards. So they have the not to exceed, but</p> <p>6 there will almost inevitably be cleanup that has</p> <p>7 to happen after the fact to account for any funds</p> <p>8 that weren't spent and those credits can be issued</p> <p>9 back.</p> <p>10 Q And if you look at the page ending in</p> <p>11 158 --</p> <p>12 A Yes.</p> <p>13 Q -- this is the Plan Summary -- the</p> <p>14 approved Tactical Media Recommendation Plan</p> <p>15 against which this upfront invoice is issued,</p> <p>16 correct?</p> <p>17 MR. PRITCHETT: Objection. Form,</p> <p>18 foundation.</p> <p>19 THE WITNESS: It looks to be, yes.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q And for October of 2022, as reflected on</p> <p>22 158, this Plan Summary shows 1 million 111 --</p>
<p style="text-align: right;">Page 67</p> <p>1 instances, the invoice is uploaded into WAWF, Wide</p> <p>2 Area Workflow, per the terms of the contract. At</p> <p>3 which point the Navy goes in, pulls down the</p> <p>4 invoice, verifies all the information on it,</p> <p>5 verifies what was purchased, that it was in line</p> <p>6 with the plan, certifies the invoice for payment</p> <p>7 and then payment is issued.</p> <p>8 (Defendant's Exhibit Number 159 was</p> <p>9 marked for identification.)</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q I'm handing you Exhibit 159,</p> <p>12 NAVY-ADS-374151. And my question to you, sir, is</p> <p>13 whether this is an invoice that describes -- that</p> <p>14 reflects the upfront payment -- or upfront</p> <p>15 invoicing that you just described?</p> <p>16 A Yes.</p> <p>17 Q And if you look at page ending 374155,</p> <p>18 in the middle it says, "This invoice is a</p> <p>19 breakdown of the INTERACTIVE pre-bill in</p> <p>20 accordance with the approval to execute plan."</p> <p>21 What does that mean?</p> <p>22 A That means exactly what I described</p>	<p style="text-align: right;">Page 69</p> <p>1 \$112,500 for The Trade Desk, correct?</p> <p>2 A No, it -- it shows a net cost of -- hold</p> <p>3 on. I'm sorry. For October through January it</p> <p>4 shows a net cost of 4.45 million.</p> <p>5 Q Okay. And in -- on the October column</p> <p>6 it has roughly one quarter of that, right?</p> <p>7 1.1 million approximately?</p> <p>8 A For the October portion that's what it</p> <p>9 shows.</p> <p>10 Q Okay. Now, go back to page 154.</p> <p>11 A Uh-huh.</p> <p>12 Q The amount pre-billed for Trade Desk on</p> <p>13 October 1, 2022 is \$1,329,471.56, correct?</p> <p>14 MR. PRITCHETT: Objection. Form.</p> <p>15 THE WITNESS: On this task order for the</p> <p>16 October through January Navy display, you are</p> <p>17 correct that the pre-bill that is sent in this</p> <p>18 month reflects 1,329,471.56.</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q Can you explain the discrepancy between</p> <p>21 what is approved on the Plan Summary of</p> <p>22 approximately 1.1 million and Y&R billing for</p>

18 (Pages 66 - 69)


<p style="text-align: right;">Page 70</p> <p>1 1.3 million in the month of October?</p> <p>2 MR. PRITCHETT: Objection. Form,</p> <p>3 foundation.</p> <p>4 THE WITNESS: Yeah, the -- the Plan</p> <p>5 Summary has a net cost of 4.45 shown for The Trade</p> <p>6 Desk and although the estimates here show an exact</p> <p>7 split between October, November, December and</p> <p>8 January of 1,112,500, that would not -- the -- the</p> <p>9 task order itself is for the total amount and so</p> <p>10 that would be their not to exceed amount.</p> <p>11 BY MS. GOODMAN:</p> <p>12 Q And --</p> <p>13 A So it -- I'm sorry.</p> <p>14 Q You go ahead. I interrupted you.</p> <p>15 A Well, I was just going to say so if this</p> <p>16 one is slightly higher, as it indicates, by about</p> <p>17 200,000, the expectation is one of the other three</p> <p>18 months would have to be 200,000 less because they</p> <p>19 would not be able to run that for all four months</p> <p>20 and, again, so long as they don't pass the</p> <p>21 not-to-exceed amount. That's the -- that's the</p> <p>22 concern.</p>	<p style="text-align: right;">Page 72</p> <p>1 the agency is not to incur costs that exceed any</p> <p>2 amount given on a funded task order.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q Okay. And you're referencing the task</p> <p>5 order, but what we're looking at in this invoice</p> <p>6 is an excerpt of the Plan Summary, correct?</p> <p>7 MR. PRITCHETT: Objection. Form.</p> <p>8 THE WITNESS: Correct.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q And the task order does not break out</p> <p>11 dollars to be spent or to be allocated to each</p> <p>12 individual recommended partner, correct?</p> <p>13 MR. PRITCHETT: Objection. Form.</p> <p>14 THE WITNESS: I don't have the specific</p> <p>15 task order in front of me to see if it -- if it</p> <p>16 lays that out.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q Have you ever seen a task order that</p> <p>19 lays out specifically a budgeted amount for a</p> <p>20 specific recommended partner such as The Trade</p> <p>21 Desk, Peacock, Kargo, as listed in this invoice</p> <p>22 we're looking at?</p>
<p style="text-align: right;">Page 71</p> <p>1 Q Okay. And the ad agency here, Y&R,</p> <p>2 determines how much to invoice upfront for; is</p> <p>3 that accurate?</p> <p>4 MR. PRITCHETT: Objection. Form,</p> <p>5 foundation.</p> <p>6 THE WITNESS: It would be accurate to</p> <p>7 say that the ad agency in determining how to</p> <p>8 execute the plan did execute the -- the 1.329.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q So within that plan, that not-to-exceed</p> <p>11 amount of 4.45 million net cost for The Trade</p> <p>12 Desk, the ad agency, Y&R, has discretion on how to</p> <p>13 invoice or when to invoice or how to spend that</p> <p>14 money across those four months so long as they do</p> <p>15 not exceed the 4.45 million?</p> <p>16 MR. PRITCHETT: Objection. Form,</p> <p>17 foundation.</p> <p>18 THE WITNESS: That is correct. They</p> <p>19 should -- they should stay -- they have to stay</p> <p>20 within that net cost that's listed on the</p> <p>21 contract -- or, excuse me, that's listed on the</p> <p>22 task order and the contract specifies that -- that</p>	<p style="text-align: right;">Page 73</p> <p>1 MR. PRITCHETT: Objection. Form</p> <p>2 foundation.</p> <p>3 THE WITNESS: No, I've never seen a task</p> <p>4 order that specified that.</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q And the upfront invoice, when they are</p> <p>7 issued, are they paid by the Navy before proof of</p> <p>8 ads being -- have been run?</p> <p>9 MR. PRITCHETT: Objection. Form,</p> <p>10 foundation.</p> <p>11 BY MS. GOODMAN:</p> <p>12 Q Let me -- let me rephrase the question.</p> <p>13 When the Navy is issued an upfront</p> <p>14 invoice or a pre-bill, as we looked at, does the</p> <p>15 Navy pay that invoice, i.e. remit payment to Y&R,</p> <p>16 before it has proof that any ads were purchased?</p> <p>17 MR. PRITCHETT: Objection. Form,</p> <p>18 foundation.</p> <p>19 THE WITNESS: So the contract with</p> <p>20 VMLY&R states that the Navy will reimburse the</p> <p>21 agency for costs incurred in the placement and</p> <p>22 purchase of media, so the -- the agency is unable</p>

<p style="text-align: right;">Page 74</p> <p>1 to bill us until they've incurred the cost.</p> <p>2 I don't have the level of detail to know</p> <p>3 exactly when they make payment to the vendor,</p> <p>4 whether it's on day one or -- or after that.</p> <p>5 But -- but they submit us -- they submit to us an</p> <p>6 invoice for the -- the pre-bill I think was the</p> <p>7 term we used here -- for the pre-bill and it's</p> <p>8 only upon the second invoicing is when they have</p> <p>9 to provide the various proofs to substantiate the</p> <p>10 final amount that is being billed to us.</p> <p>11 BY MS. GOODMAN:</p> <p>12 Q Does the Navy pay the pre-bill before</p> <p>13 receiving that second invoice?</p> <p>14 MR. PRITCHETT: Objection. Form.</p> <p>15 THE WITNESS: Yes, the Navy pays the</p> <p>16 pre-bill to enable the media to be purchased.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q Okay. So the Navy pays the pre-bill</p> <p>19 before media is, in fact, purchased?</p> <p>20 MR. PRITCHETT: Objection. Form,</p> <p>21 foundation.</p> <p>22 THE WITNESS: Again, as I stated</p>	<p style="text-align: right;">Page 76</p> <p>1 THE WITNESS: Yeah, the Navy is not</p> <p>2 privy to the detailed information of exactly when</p> <p>3 any of their vendors, whether it be The Trade Desk</p> <p>4 or others, are paid.</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q Okay. And the Navy is not privy to who</p> <p>7 remits payment to vendors, meaning WaveMaker or</p> <p>8 Y&R, correct?</p> <p>9 MR. PRITCHETT: Objection. Form,</p> <p>10 foundation.</p> <p>11 THE WITNESS: The Navy's contract is</p> <p>12 with VMLY&R. WaveMaker is one of their</p> <p>13 affiliates. The billing comes from VMLY&R and</p> <p>14 that's who payment is remitted to. But past</p> <p>15 that -- we are not privy to the level of their</p> <p>16 financial systems of how payment is executed past</p> <p>17 that.</p> <p>18 BY MS. GOODMAN:</p> <p>19 Q So all the Navy knows is that it pays</p> <p>20 VMLY&R for media purchased on Navy's behalf,</p> <p>21 correct?</p> <p>22 MR. PRITCHETT: Objection. Form,</p>
<p style="text-align: right;">Page 75</p> <p>1 earlier, the Navy -- the Navy pays the pre-bill to</p> <p>2 support costs incurred, but I -- just as I stated</p> <p>3 earlier, we don't tell them how to execute, I'm</p> <p>4 not privy to at what date they would actually</p> <p>5 execute the -- the media buy.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q I see.</p> <p>8 A But as they send us the pre-bill, that's</p> <p>9 when we approve it and -- for payment. And then</p> <p>10 when they send us the second billing is whenever</p> <p>11 we go to the penny to balance what was actually,</p> <p>12 after any credits, what was actually spent and the</p> <p>13 substantiating invoices from all the vendors.</p> <p>14 And, again, we -- we match that up to the penny.</p> <p>15 BY MS. GOODMAN:</p> <p>16 Q And the Navy is not aware of how --</p> <p>17 strike that.</p> <p>18 The Navy is not aware of when vendors</p> <p>19 such as The Trade Desk are paid by its ad agency,</p> <p>20 correct?</p> <p>21 MR. PRITCHETT: Objection. Form,</p> <p>22 foundation.</p>	<p style="text-align: right;">Page 77</p> <p>1 foundation.</p> <p>2 THE WITNESS: It would be -- it would be</p> <p>3 more complete to say the Navy knows all of the</p> <p>4 media that's been purchased on its behalf and pays</p> <p>5 VMLY&R to reimburse them the cost incurred in the</p> <p>6 placement of media, yes.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q And are there occasions when VMLY&R does</p> <p>9 not pass on all of the costs incurred by it to the</p> <p>10 Navy?</p> <p>11 MR. PRITCHETT: Objection. Form,</p> <p>12 foundation.</p> <p>13 THE WITNESS: The contract calls for</p> <p>14 VMLY&R to -- to be reimbursed for those costs</p> <p>15 incurred. To the best of my knowledge, I don't</p> <p>16 believe they have incurred any costs that they</p> <p>17 didn't bill us for.</p> <p>18 (Defendant's Exhibit Number 160 was</p> <p>19 marked for identification.)</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q Okay. I'm handing you Exhibit 160,</p> <p>22 NAVY-ADS-373978. This is a lengthy invoice and I</p>

20 (Pages 74 - 77)

<p style="text-align: right;">Page 78</p> <p>1 just want to direct you to the Billing Memo on the 2 second page of it. 3 My first question is what is a Billing 4 Memo? 5 A A Billing Memo could be used to explain 6 any type of -- any type of discrepancy or 7 something otherwise that might be noted in here 8 and to explain what that is for. 9 Q Okay. And this Billing Memo shows that 10 VMLY&R is not charging the Navy for, in the second 11 bullet, an 8-cent fee and in the fourth bullet a 12 4-cent fee, correct? 13 A Let's see. 14 MR. PRITCHETT: Objection. Form. 15 THE WITNESS: As I testified earlier, we 16 balance this down to the penny and when -- when 17 the Navy finds any discrepancies and notifies 18 VMLY&R, they have in the past issued a memo to -- 19 such as this -- to explain that any amount under a 20 certain amount of money, and I -- I can't remember 21 if it's like \$1 or 50 cents or whatever, they 22 don't -- they don't try to collect on due to it</p>	<p style="text-align: right;">Page 80</p> <p>1 the 4 in this -- in this occasion was paid to 2 Amazon in bullets two and four. 3 BY MS. GOODMAN: 4 Q Okay. And do you have -- now that this 5 document has refreshed your recollection, do you 6 recall any other instances where VMLY&R has not 7 passed on certain charges to the Navy that it -- 8 MR. PRITCHETT: Objection. I'm sorry. 9 BY MS. GOODMAN: 10 Q -- incurred in the purchase of media for 11 the Navy? 12 MR. PRITCHETT: Objection. Form, 13 foundation. 14 THE WITNESS: Aside from this where 15 we're talking small amounts, in the -- in the -- 16 in the pennies, I am unaware of any time where 17 the -- VMLY&R, you know, would not attempt to bill 18 us for costs incurred. 19 BY MS. GOODMAN: 20 Q And any price negotiations that take 21 place for the purchase of media, does the Navy 22 participate in those?</p>
<p style="text-align: right;">Page 79</p> <p>1 being more -- more cost in manpower to chase that 2 down and do the work than rather collect on it. I 3 don't remember the exact dollar amount, but this 4 refreshes my memory on that. 5 BY MS. GOODMAN: 6 Q Okay. And does the Navy know whether 7 even though VMLY&R has not charged the Navy for 8 these fees -- strike that. 9 Although VMLY&R has not charged the Navy 10 for these fees, does the Navy know whether VMLY&R, 11 in fact, pays the fees to the vendors, here 12 Amazon? 13 MR. PRITCHETT: Objection. Form, 14 foundation. 15 THE WITNESS: So the -- the contract 16 with VMLY&R calls for them to only bill us for 17 costs incurred, which would include those fees, 18 and once we pay those to VMLY&R, it would be our 19 understanding that -- that they would pay those 20 vendors. 21 In this particular instance, I can't 22 confirm whether the 8 cents was paid to Amazon or</p>	<p style="text-align: right;">Page 81</p> <p>1 MR. PRITCHETT: Objection. Form, 2 foundation. 3 THE WITNESS: The Navy contracts with 4 VMLY&R to negotiate placement of media on our 5 behalf with the exception of one minor instance 6 I -- I can -- I can remember where the Navy was -- 7 even in that instance we weren't directly involved 8 with the vendor. But there was a vendor who was 9 trying to double the -- the price, but it 10 wasn't -- it was an online tool, but it wasn't the 11 purchase of media. But, no, as a -- as a general 12 rule, the Navy does not get involved in that 13 negotiation. 14 BY MS. GOODMAN: 15 Q And so long as your ad agency stays 16 within the not-to-exceed amount for the purchasing 17 of advertising, it has discretion to negotiate 18 pricing, correct? 19 MR. PRITCHETT: Objection. Form, 20 foundation. 21 THE WITNESS: Yeah, the contract calls 22 for them to propose, recommend and negotiate</p>

<p style="text-align: right;">Page 82</p> <p>1 pricing on our behalf. 2 (Defendant's Exhibit Number 161 was 3 marked for identification.) 4 BY MS. GOODMAN: 5 Q I'm handing you Exhibit 161, 6 NAVY-ADS-5844, and this is a Digital Media Refund 7 document. 8 In what instances does Y&R refund Navy 9 for the purchase of digital media? 10 MR. PRITCHETT: Objection. Form, 11 foundation. 12 THE WITNESS: Let me read this document 13 real quick. 14 Is your question pertaining to this 15 instance or just in general? 16 BY MS. GOODMAN: 17 Q First -- first, let's keep it to this 18 instance. 19 For what purpose was the Navy issued a 20 refund, as reflected in this Exhibit 161? 21 MR. PRITCHETT: Objection. Form. 22 THE WITNESS: Yeah, so without the</p>	<p style="text-align: right;">Page 84</p> <p>1 BY MS. GOODMAN: 2 Q Okay. I'm handing you Exhibit 162, 3 which is an e-mail from VMLY&R to Cheryl 4 Aimes-Tillman, NAVY-ADS-5834 to 5837. 5 And Cheryl Aimes-Tillman, she's at the 6 Navy, what's her role? 7 A She is a warranted contracting officer 8 who works for Ms. Dean Stewart-Curry. 9 Q And this set of refunds attached to this 10 e-mail for the amounts of \$2,500 approximately and 11 \$212,000 approximately, what would you need to do 12 to figure out precisely what purchases are being 13 refunded here? 14 MR. PRITCHETT: Objection. Form. 15 THE WITNESS: Let me review this real 16 quick. 17 So I would need to -- I would need to 18 look at the same documents as referenced earlier. 19 And because this references the Army-Navy game 20 2019 and has the -- for the 212,000 amount, again, 21 I would have to -- I wouldn't want to say with 22 certainty, but I'm -- I'm supposing that that</p>
<p style="text-align: right;">Page 83</p> <p>1 supporting documentation of the work statement and 2 the reco deck and the -- all the -- the other 3 substantiated documentation, it would be 4 impossible for me to determine exactly what this 5 was on itself -- why this -- why this refund 6 occurred, but I can talk in general why a refund 7 would occur. 8 BY MS. GOODMAN: 9 Q Okay. What documentation would you look 10 at -- would you need to look at in order to figure 11 out precisely what has been refunded -- what 12 purchases have been refunded? 13 A Sure. 14 MR. PRITCHETT: Objection. Form. 15 THE WITNESS: I would need to look at 16 the task order, the reco, the detailed invoice, 17 and then any -- any additional e-mails that 18 might -- that might be attached to that. But -- 19 but from those I could get an idea of what that 20 refund was -- was due for. 21 (Defendant's Exhibit Number 162 was 22 marked for identification.)</p>	<p style="text-align: right;">Page 85</p> <p>1 might have something to do with COVID and the 2 implications on the game. That's probably the 3 year that they didn't let anyone outside of Navy 4 and Army actually attend the game and, therefore, 5 we didn't have all the advertising that we would 6 normally have. But, again, that's just my 7 assumption without looking at documents. I would 8 have to go look at those documents that you asked 9 for earlier -- or that I mentioned to you earlier. 10 BY MS. GOODMAN: 11 Q And so is it accurate to say that simply 12 looking at invoice amounts to the Navy is not 13 necessarily the full -- or the most accurate 14 representation of how much money the Navy actually 15 paid to VMLY&R? 16 MR. PRITCHETT: Objection. Form. 17 THE WITNESS: No, the -- the invoicing 18 remains that they submit a -- and it's mentioned 19 in the e-mail here from Cheryl actually, that "a 20 task order is closed out when all deliverables 21 have been received and accepted." So the agency 22 is supposed to submit a final task order ending</p>

<p style="text-align: right;">Page 106</p> <p>1 through Google's Ad Exchange?</p> <p>2 A No, we do not.</p> <p>3 MR. PRITCHETT: Okay. No further</p> <p>4 questions.</p> <p>5 MS. GOODMAN: Okay.</p> <p>6 VIDEO TECHNICIAN: The time is</p> <p>7 12:08 p.m. We're off the record.</p> <p>8 (Whereupon, at 12:08 p.m., the</p> <p>9 deposition of ALLEN OWENS, JR.</p> <p>10 was concluded.)</p> <p>11 * * * * *</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 108</p> <p>1 A C K N O W L E D G E M E N T</p> <p>2 O F D E P O N E N T</p> <p>3</p> <p>4 I, ALLEN OWENS, JR., do hereby acknowledge</p> <p>5 I have read and examined the foregoing pages of</p> <p>6 testimony, and the same is a true, correct and</p> <p>7 complete transcription of the testimony given by</p> <p>8 me, and any changes or corrections, if any, appear</p> <p>9 in the attached errata sheet signed by me.</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20 _____</p> <p>21 Date ALLEN OWENS, JR.</p> <p>22 Job No. CS6118347</p>
<p style="text-align: right;">Page 107</p> <p>1 CERTIFICATE OF NOTARY PUBLIC</p> <p>2 I, SHARI R. BROUSSARD, the officer before</p> <p>3 whom the foregoing deposition was taken, do hereby</p> <p>4 certify that the witness whose testimony appears</p> <p>5 in the foregoing deposition was duly sworn by me;</p> <p>6 that the testimony of said witness was taken by me</p> <p>7 in stenotype and thereafter reduced to typewriting</p> <p>8 under my direction; that said deposition is a true</p> <p>9 record of the testimony given by said witness;</p> <p>10 that I am neither counsel for, related to, nor</p> <p>11 employed by any of the parties to the action in</p> <p>12 which this deposition was taken; and, further,</p> <p>13 that I am not a relative or employee of any</p> <p>14 counsel or attorney employed by the parties</p> <p>15 hereto, nor financially or otherwise interested in</p> <p>16 the outcome of this action.</p> <p>17</p> <p>18 </p> <p>19 SHARI R. BROUSSARD</p> <p>20 Notary Public in and for the</p> <p>21 District of Columbia</p> <p>22 My commission expires:</p> <p>August 14, 2025</p>	<p style="text-align: right;">Page 109</p> <p>1 Katherine Clemons Esq.</p> <p>2 katherine.clemons@usdoj.gov</p> <p>3 October 2, 2023</p> <p>4 RE: United States, Et Al v. Google, LLC</p> <p>5 9/28/2023, Allen Owens, Jr., Navy 30(B)(6) (#6118347)</p> <p>6 The above-referenced transcript is available for</p> <p>7 review.</p> <p>8 Within the applicable timeframe, the witness should</p> <p>9 read the testimony to verify its accuracy. If there are</p> <p>10 any changes, the witness should note those with the</p> <p>11 reason, on the attached Errata Sheet.</p> <p>12 The witness should sign the Acknowledgment of</p> <p>13 Deponent and Errata and return to the deposing attorney.</p> <p>14 Copies should be sent to all counsel, and to Veritext at</p> <p>15 erratas-cs@veritext.com</p> <p>16</p> <p>17 Return completed errata within 30 days from</p> <p>18 receipt of testimony.</p> <p>19 If the witness fails to do so within the time</p> <p>20 allotted, the transcript may be used as if signed.</p> <p>21</p> <p>22 Yours,</p> <p>23 Veritext Legal Solutions</p> <p>24</p> <p>25</p>